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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,619	09/22/2003	Donald E. Govoni	7539-CO2	1167

7590 04/01/2004

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EXAMINER

TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/667,619

Applicant(s)

GOVONI ET AL.

Examiner

Cephia D. Toomer

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,9 and 10 is/are rejected.
- 7) ☒ Claim(s) 6-8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
2. In the response to this office action, Applicant should correct the continuing data that appears on page 1 of the specification.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,641,624. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to have mixed the present coal/polymer composition in a mill because a mill is a conventional mixing apparatus well known to those skilled in the art.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-5 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ford (US 5,487,764).

Ford teaches a fuel product comprising stockpile coal fines, methyl ethyl ketone (solvent) and an aqueous emulsion of polyvinyl acetate. The components are blended until the mixture is homogeneous. See abstract; col. 1, lines 43-52; Example 1; col. 5, lines 15-24; claim 4.

Accordingly, Ford teaching all the limitations of the claims anticipates the claims.

7. Claims 1, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Matthews (US 4,421,520).

Matthews teaches a fuel product comprising run of the mine coal and a deactivating dispersion fluid of polyvinyl acetate, or vinylacetate/acrylic copolymers. The coal and deactivating fluid are mixed in a vessel (see abstract; col. 2, lines 3-7, 13-22; col. 5, lines 31-62).

Accordingly, Matthews teachings all the limitations of the claims anticipates the claims.

Art Unit: 1714

8. Claims 1, 3-5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaffer (US 4,863,485).

Schaffer teaches a fuel product of coal and an aqueous emulsion of polyvinyl alcohol. The mixture may contain at least 1 percent by weight of water. The components are mixed together until a homogenous mixture is obtained. See abstract; col. 3, lines 10-15, 51-65; col. 4, lines 31-55; col. 5, lines 30-39.

Accordingly, Schaffer teaching all the limitations of the claims anticipates the claims.

9. Claims 1-5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by FR2683544.

FR teaches a fuel product comprising coal fines, a polymeric binder (polyvinyl acetate, ethylene/vinyl acetate copolymers or mixtures thereof). The binder is in the form of an emulsion. In the case of the aqueous formulation, additional water is present in the mix. The coal, binder and water are mixed in a kneader. See abstract; page 4, ninth paragraph; page 5, third and fourth paragraphs; page 6, first full paragraph and paragraphs 3 and 5; and Examples.

Accordingly, FR teaching all the limitations of the claims anticipates the claims.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1714

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schaffer or FR2683544 as applied to the claims above, and further in view of Ford (US 5,487,764).

Schaffer and the French reference have been discussed above. The references fail to disclose from the where the coal is obtained. However, Ford teaches this difference.

Ford teaches the coal fines are available in abundance worldwide and have historically been accumulated in stockpiles at various locations. See col. 1, lines 44-52.

It would have been obvious to one of ordinary skill in the art to have selected coal fines from stockpiles because Ford teaches that the coal fine are available in abundance worldwide and create environmental problems. Thus, the selection of these fines would reduce or eliminate the environmental problems that occur because of the stockpiles.

12. Claims 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

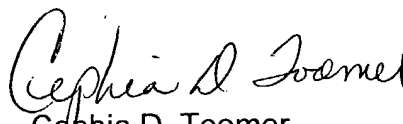
The prior art fails to teach or suggest the use of an alcoholic diluent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cepha D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

Art Unit: 1714

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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